

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



ORIGINAL **74-1433**

To be argued by  
EDWIN K. REID

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**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

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ANNE QUINN CORPORATION and EARL J. SMITH  
& CO., INC., n/k/a U.S. BULK CARRIERS, INC.,

*Plaintiffs-Appellees,*

*against*

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT,  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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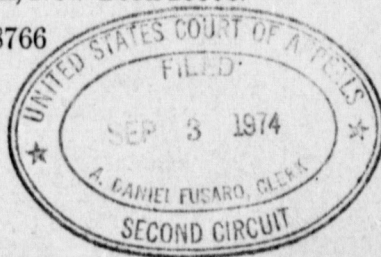
**BRIEF FOR APPELLEES**

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# United States Court of Appeals

## FOR THE SECOND CIRCUIT

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ANNE QUINN CORPORATION and EARL J. SMITH & Co., INC.,  
n/k/a U.S. BULK CARRIERS, INC.,

*Plaintiffs-Appellees,*

*against*

AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY,  
*Defendant-Appellant.*

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### BRIEF FOR APPELLEES

American Manufacturers Mutual Insurance Company appeals from a judgment entered January 29, 1974 by the United States District Court for the Southern District of New York (Bonsal, J.), declaring that appellant's ocean marine excess policy DE 3540 had been validly procured and provided appellees excess insurance coverage of their liability for bodily injury, death and property damage claims occasioned by the sinking of the "Smith Voyager" in December 1964 due to overloading.\* The judgment was based on the District Court's opinion (15a) dated December 14, 1973 and reported at 369 F.Supp. 1312. Jurisdiction of the appeal is based on Title 28 U.S. Code § 1291.

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\* Plaintiffs also claimed counsel fees and expenses under the policy. Although the lower court indicated that plaintiffs were entitled to counsel fees and expenses, the opinion and judgment do not mention it. Appellant attacks the validity of the policy and presumably includes any issue of counsel fees and expenses.



This court in 439 F.2d 109 (2 Cir. 1971) affirmed 293 F. Supp. 172 (SDNY 1969) denying plaintiffs-appellees herein the benefits of the Limitation Act, 46 U.S. Code sec. 183 *et seq.* for the sinking of the "Smith Voyager" because of overloading with the privity and knowledge of the plaintiffs.

By stipulation the personal injury, death and cargo claimants were permitted to intervene as parties in the court below because of their potential interest in plaintiffs' claim against the defendant under the excess insurance policy issued to plaintiff by defendant. Proof of their damages in the limitation action in excess of payments already received by the primary P & I insurer have been deferred pending the outcome of the present action.

Plaintiffs adopt the brief of the injury and death claimants represented by Abraham E. Freedman and will not file a separate brief on this appeal. Plaintiffs request that the lower court be affirmed in all respects.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ANNE QUINN CORPORATION and EARL J.  
SMITH & CO., INC., n/k/a U. S.  
BULK CARRIERS, INC.,

Plaintiffs-Appellees,

against

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

Defendant-Appellant.

State of New York,  
County of New York,  
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes  
and says that he is over the age of 18 years. That on the 30th  
day of August, 1974, he served two copies of the  
Appellees' Brief on  
Abraham E. Freedman, Esq.  
the attorney for the Injury and Death Claimants--Appellees  
by depositing the same, properly enclosed in a securely sealed  
post-paid wrapper, in a Branch Post Office regularly maintained  
by the Government of the United States at 90 Church Street, Borough  
of Manhattan, City of New York, directed to said attorney at  
No. 346 West 17th Street, New York ( ) N. Y.,  
that being the address designated by him for that purpose upon  
the preceding papers in this action.

*David F. Wilson*

Sworn to before me this

30th day of August, 1974

*Courtney J. Brown*

COURTNEY J. BROWN  
Notary Public, State of New York  
No. 31-5472920  
Qualified in New York County  
Commission Expires March 30, 1976

Due and timely service of Two copies  
of the within BRIEF is hereby  
admitted this day of AUGUST 1974

.....  
Attorneys for CLAIMANT APPELLANT  
INDIA SUPPLY, HISSON

COPY RECEIVED

AUG 29 1974

BAKER, NELSON, WILLIAMS & MITCHELL

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ATTORNEYS FOR DEFENDANT-APPELLANT

8/30/74 Davis & Davis

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ATTORNEYS FOR CLAIMANT APPELLANT  
VARIETA

2 Copies Rec'd - 1:45 - Thacher,  
Proffetta Wood by  
[Signature]



